



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 220214-0047]

RIN 0648-BK66

Pacific Island Fisheries; Rebuilding Plan for Guam

Bottomfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements a rebuilding plan that includes annual catch limits (ACL) and accountability measures (AM) for the overfished bottomfish stock complex in Guam. This action is necessary to rebuild the overfished stock consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Copies of Amendment 6, including an Environmental Assessment and Regulatory Impact Review, and other supporting documents for this action are available at <https://www.regulations.gov/document/NOAA-NMFS-2021-0104>.

FOR FURTHER INFORMATION CONTACT: Keith Kamikawa, NMFS
Pacific Islands Regional Office, Sustainable Fisheries,
808-725-5177.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific
Fishery Management Council (Council) manage the Guam
bottomfish fishery under the Fishery Ecosystem Plan for the
Mariana Archipelago (FEP) and implementing regulations. The
Guam fishery harvests 13 species of emperors, snappers,
groupers, and jacks. There are more than 300 participants
in the fishery. Most (73.6 percent) of the bottomfish
habitat is in territorial waters (generally from the
shoreline to 3 nautical miles (5.6 km) offshore), with the
rest in Federal waters (i.e., the U.S Exclusive Economic
Zone) around offshore banks to the northeast and southwest
of Guam.

On February 10, 2020, NMFS notified the Council that
the Guam bottomfish stock complex was overfished, but not
subject to overfishing (85 FR 26940, May 6, 2020).
Consistent with section 304(e) of the Magnuson-Stevens Act
and implementing regulations at 50 CFR 600.310(j), the
Council must prepare, and NMFS must implement, a rebuilding
plan within two years of the notification.

Amendment 6 implements a rebuilding plan for the Guam
bottomfish stock complex that consists of an ACL and two
AMs. We will set the ACL at 31,000 lb (14,061 kg) starting
in 2022. Because the complex exists in both territorial and

Federal waters around Guam, we are obligated to manage the stock throughout its range and will count harvests from territorial and Federal waters toward the ACL. However, existing data collection programs do not differentiate catch from territorial versus Federal waters.

As an in-season AM, if NMFS projects that the fishery will reach the ACL in any year, then we would close the fishery in Federal waters for the remainder of that year. Because Guam does not currently have regulations in place to implement a complementary ACL and in-season AM in territorial waters, as an additional AM, if subsequent analyses indicate that the fishery exceeded the ACL during a year, we would close the fishery in Federal waters until NMFS and the Territory of Guam implement a coordinated management approach and implement regulations to ensure that the catch in both Federal and territorial waters is maintained at levels that allow the stock to rebuild. The rebuilding plan would remain in place until NMFS determines that the stock complex is rebuilt, which is expected to take nine years. This rebuilding plan was selected because it allows for the least disruption to the fishing community and minimizes negative socio-economic impacts while still rebuilding the stock complex within the 10-year period required by the Magnuson-Stevens Act. NMFS and the Council would review the rebuilding plan routinely every two years

and modify it, as necessary, per section 304(e)(7) of the Magnuson-Stevens Act.

You may find additional background information on this action in the preamble to the proposed rule (86 FR 67426, November 26, 2021).

Comments and Responses

On November 15, 2021, NMFS published a notice of availability (NOA) for Amendment 6 and requested public comments (86 FR 62982). The comment period ended January 14, 2022, and no comments were received.

On November 26, 2021, NMFS published the proposed rule and again requested public comments (86 FR 67426). That comment period ended January 10, 2022. NMFS received comments from five individuals and responds below.

Comment 1: The plan promotes rebuilding of the Guam bottomfish stock complex, which also benefits the communities that rely on this fishery. The plan acknowledges the dietary and cultural importance of the stock while also considering the cultural importance of the fishery and the financial impact of the proposed action.

Response: We agree.

Comment 2: If individual fishermen begin to experience significant adverse economic effects, would NMFS lower the standards or provide relief to these fishermen?

Response: The Council and NMFS selected this rebuilding plan because it rebuilds the stock complex while

minimizing negative socio-economic impacts to the fishing community. In the past 10 years, catch has only exceeded the proposed ACL twice. Limiting total bottomfish catches annually as proposed is expected to increase stock biomass, providing long-term benefits to fishery participants. NMFS will evaluate the progress of the rebuilding plan, including all environmental and socioeconomic effects, at least every two years, as required by the Magnuson-Stevens Act, and work with the Council to revise the rebuilding plan if necessary.

Comment 3: The proposed rebuilding plan does not impose too large of an impact on the people of Guam, it restores the bottomfish stock, and is scientifically supported. There should be mandatory reporting of catch to help enforce against overfishing.

Response: We require large vessels (>50 ft, >15.2 m) that fish in Federal waters to hold a Federal permit and report their catch (50 CFR 665.404(a)); however, there are no current Federal permit holders. Small vessels (<50 ft, <15.2 m) are predominantly fishing in territorial waters and do not require a Federal permit to fish in Federal waters and are not required to report their catch to NMFS. The Guam Division of Aquatic and Wildlife Resources (DAWR) collects and provides NMFS with fishery catch information through voluntary fishermen surveys, and voluntary commercial sales data from its commercial receipt book

program. The Council and NMFS continue to monitor catches through these systems to track catch toward the ACL and implement AMs if necessary. The Council considered requiring mandatory reporting alongside bag limits in Federal waters as an element of this rebuilding plan, but decided not to pursue this option because it would require substantial administrative resources and effort from NMFS to develop a reporting system, additional resources and effort from the NOAA Office of Law Enforcement and the U.S. Coast Guard to enforce these requirements, and could result in additional costs to fishermen in terms of increased time dedicated to accurately report catch (see Environmental Assessment Section 2.8.3). The implementation of a permitting program or additional monitoring measures for territorial waters is at the discretion of DAWR. See also response to Comment 1.

Comment 4: Support the proposed rebuilding plan. Regulators should work closely with Guam fishing communities, improve data collection to distinguish catch from territorial versus Federal waters, and coordinate territorial and Federal management.

Response: We agree and value community input. The community participates in decision-making processes through Council advisory panels, its Council representatives, public input during Council deliberations, and through public comment periods during NMFS rulemaking processes.

NMFS and the Council work closely with the Guam Government through its Council members and its representatives on the Council Scientific and Statistical Committee and other Council advisory bodies.

Comment 5: By implementing annual catch limits and accountability measures, this rebuilding plan secures environmental and economic security for all of its stakeholders and will result in continued and sustained prosperity of fishers. NMFS should incentivize community participation in the decision making process.

Response: We agree, value community input, and will continue to encourage community participation in the several ways noted above.

Changes from the Proposed Rule

This final rule does not make any substantive changes from the proposed rule.

Classification

Pursuant to section 304(b) (3) of the Magnuson-Stevens Fishery and Conservation Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant

economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits, Bottomfishing, Fisheries, Fishing, Guam, Pacific Islands, Rebuilding.

Dated: February 14, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.405, add paragraphs (g) and (h) to read as follows:

§ 665.405 Prohibitions.

* * * * *

(g) Fish for or possess any Mariana Bottomfish MUS as defined in § 665.401 in the Guam Management Subarea after a closure of the fishery in violation of § 665.409(d).

(h) Sell or offer for sale any Mariana Bottomfish MUS as defined in § 665.401 in the Guam Management Subarea after a closure of the fishery in violation of § 665.409(e)

3. Revise § 665.408 to read as follows:

§ 665.408 CNMI Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) In accordance with § 665.4, the ACL and ACT for Mariana bottomfish MUS in the CNMI Management Subarea for each fishing year is as follows:

Table 1 to Paragraph (a)

	2021	2022	2023
ACL (lb)	84,000	84,000	84,000
ACT (lb)	78,000	78,000	78,000

(b) If the average catch of the three most recent years exceeds the specified ACL in a fishing year, the Regional Administrator will reduce the ACL and the ACT for

the subsequent year by the amount of the overage in a separate rulemaking.

4. Add § 665.409 to read as follows:

§ 665.409 Guam Annual Catch Limits (ACL) .

(a) In accordance with § 665.4, the ACL for Mariana bottomfish MUS in the Guam Management Subarea is 31,000 lb.

(b) When NMFS projects the ACL will be reached, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, through the end of the fishing year in which the catch limit is reached.

(c) If the ACL is exceeded in any fishing year, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register. The fishery will remain closed until such time that a coordinated approach to management is developed and regulations are implemented that ensures catch in both Federal and territorial waters

can be maintained at levels that allow the stock to rebuild or the rebuilding plan is modified based on the best scientific information available.

(d) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, fishing for and possession of Mariana bottomfish MUS is prohibited in the Guam Management Subarea, except as otherwise authorized by law.

(e) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, sale, offering for sale, and purchase of any Mariana bottomfish MUS caught in the Guam Management Subarea is prohibited.